Filed 8/5/19 City of South Lake Tahoe v. Cobrae CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

CITY OF SOUTH LAKE TAHOE, Plaintiff and Respondent, v. DARREN COBRAE, Defendant and Appellant.	C083568 (Super. Ct. No. SCW20160001)

This appeal arises out of the City of South Lake Tahoe's dismissal of its petition seeking appointment of a receiver under Health and Safety Code section 17980.7 for an allegedly substandard building owned by appellant Darren Cobrae. While the dismissal resolved the underlying action, it sparked an ongoing fight over attorney's fees. On appeal, Cobrae challenges the trial court's: (1) determination that there was no prevailing party in the action and resultant denial of his motion for attorney's fees; (2) award of attorney's fees to the City for successfully opposing his motion for sanctions under Code of Civil Procedure section 128.5; (3) denial of his ex parte motion to compel responses to

requests for production of documents and depositions; and (4) denial of his request for a post-judgment evidentiary hearing. [1] Because Cobrae has failed to demonstrate reversible error, we will affirm the judgment.

I. BACKGROUND

"Pursuant to [Health and Safety Code s]ection 17980.6, an enforcement agency may issue a notice to an owner to repair or abate property conditions that violate state or local building standards and substantially endanger the health and safety of residents or the public. [Health and Safety Code s]ection 17980.7 provides that, if the owner fails to comply with the notice despite having been afforded a reasonable opportunity to do so, the enforcement agency may seek judicial appointment of a receiver to assume control over the property and remediate the violations or take other appropriate action." (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 912.)

Cobrae purchased the motel that is at the center of this proceeding in December 2014. On December 21, 2015, the day after the City's police and fire departments responded to a structure fire at the motel, an officer from the police department's code enforcement division served Cobrae with 12 administrative citations for violations of the South Lake Tahoe City Code and a notice pursuant to Health and Safety Code section 17980.6 to repair and abate those violations. It was the eighth time she had issued administrative citations for the property since Cobrae had taken ownership of it.

On February 11, 2016, the City filed a petition against Cobrae for an order to appoint a receiver for the motel pursuant to Health and Safety Code section 17980.7. The petition alleged numerous violations of the Health and Safety Code and City Code on the property constituted an extreme danger to anyone who entered the property, as well as the neighboring homes in the community. The petition also alleged the property had a

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[1] Undesignated statutory references are to the Code of Civil Procedure.

history of police calls for service, unpermitted construction, and substandard housing conditions dating back to 2008. "As of [the] filing of this case, [Cobrae] has not fixed a single violation, nor has he purchased a building permit for structural issues, or paid the fines associated with the 41 Administrative Citations" issued to him in 2015.

The hearing on the petition began on May 2, 2016, and was scheduled to continue on June 27, 2016. On May 18, 2016, an inspection of the property demonstrated that nearly all of the violations had been corrected. On June 13, 2016, the City filed a request to dismiss the petition with prejudice. The dismissal was entered as requested.

The parties each filed a motion for attorney's fees as the prevailing party in the action under Health and Safety Code section 17980.7, subdivision (c)(11). Cobrae also filed a motion for sanctions under section 128.5.

Health and Safety Code section 17980.7, subdivision (c)(11) provides: "The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court." The trial court determined that because "prevailing party" is not defined in this statute, it had discretion to determine the prevailing party on a practical level. (See *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1571, 1574 [concluding trial court should "analyze[] which party had prevailed on a practical level" when determining who the "prevailing party" was under a statute that awarded attorney's fees and costs to the "prevailing party" but did not define the term].) In an August 10, 2016, order, the court denied both motions for attorney's fees on the basis that there was no prevailing party.

The court overruled Cobrae's objections to the evidence the City submitted in support of its motion for attorney's fees and in opposition to Cobrae's motion for attorney's fees, including an objection that certain portions of the City's declarations were collaterally estopped from being stated.

In denying Cobrae's motion for attorney's fees, the court explained, "Although [Cobrae] declares that the property substantially complied with the citations and notices

in December 2015 prior to the filing of the petition, there is evidence before the court that contradicts [Cobrae]'s declaration and the evidence before the court does not establish that the purported refusal to inspect occurred prior to the filing of the petition to enforce the citations and notices by means of abatement in a receivership. Therefore, the court finds the weight of the specific factual evidence before the court supports finding that as of the date the petition was filed, there remained repairs to be[] completed in order [to] correct the cited building and safety code violations." The court found there was no prevailing party "because there exists good news and bad news as to each of the parties to this litigation related to their attainment of their litigation objectives in this case." "While [the City] attained its objective to have [Cobrae] comply with the citations and notices, a receiver was not appointed to remedy alleged deferred maintenance or to demolish the structures on the property premised upon a court finding that [Cobrae] could not bring the property into a safe state. [¶] On the other hand, although [Cobrae] was prompted to complete repairs in order to avoid the receivership, he also avoided the [City]'s implied threat of demolition of the structures on the property during a receivership."

The August 10, 2016, order also denied Cobrae's motion for sanctions and, as requested by the City, awarded the City its attorney's fees for successfully defeating that motion. Cobrae brought a motion to reconsider this "sanctions award." In response, the court amended the August 10, 2016, order to add further discussion regarding the basis for its award of attorney's fees.

Cobrae filed a timely appeal.

II. DISCUSSION

A. Principles of Appellate Review

A lower court order is presumed correct, and the appellant must affirmatively show error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a

point is asserted without argument and authority for the proposition, 'it is deemed to be without foundation and requires no discussion by the reviewing court.' " (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) With respect to citations to the record, the appellant must "[s]upport *any* reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C), italics added.) That relevant record citations may have been provided elsewhere in the brief, such as in the factual background, does not cure a failure to support specific legal arguments with citations to the record. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16.) Similarly, any arguments raised or only supported by authority on reply have been waived. (*People v. Baniqued* (2000) 85 Cal.App.4th 13, 29.)

B. Cobrae's Motion for Attorney's Fees

The trial court's conclusion that there was no prevailing party, and thus Cobrae was not entitled to attorney's fees, was based in part on its finding that he was prompted by the City's petition to complete certain repairs. In his opening brief, Cobrae argued the court's finding was erroneous because: (1) it was barred by res judicata, and (2) it was not supported by substantial evidence.

1. Issue Preclusion

Our Supreme Court has "frequently used 'res judicata' as an umbrella term encompassing both claim preclusion and issue preclusion, which [it] described as two separate 'aspects' of an overarching doctrine." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823 (*DKN Holdings*).) The primary aspect is now referred to as "claim preclusion" rather than "res judicata." (*Id.* at p. 824; *Samara v. Matar* (2018) 5 Cal.5th 322, 326.) The secondary aspect is now referred to as "issue preclusion" rather than "direct or collateral estoppel." (*DKN Holdings, supra,* at p. 824; *Samara v. Matar, supra,* at p. 326.)

"*Claim preclusion* 'prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.' [Citation.] Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit." (*DKN Holdings, supra,* 61 Cal.4th at p. 824.) The doctrine " ' "precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief." ' " (*Mycogen Corp. v. Monsanto Co*. (2002) 28 Cal.4th 888, 897.)

"*Issue preclusion* prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. [Citation.] Under issue preclusion, the prior judgment conclusively resolves an issue actually litigated and determined in the first action." (*DKN Holdings, supra,* 61 Cal.4th at p. 824.) It differs from claim preclusion in that it "does not bar entire causes of action" but "prevents relitigation of previously decided issues." (*Ibid*.) The doctrine applies "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*Id*. at p. 825.)

In his opening brief, Cobrae contended that, because the City dismissed its petition with prejudice, claim and issue preclusion barred it from subsequently asserting he had failed to correct all violations by the time the City filed its petition. In his reply brief, Cobrae clarified that he is only arguing for the application of "direct estoppel." Cobrae appears to operate under the misunderstanding that "direct estoppel" is a term that applies when issue preclusion occurs within the same action, and "collateral estoppel" is when issue preclusion occurs between different actions involving different claims. The primary case Cobrae cites for this understanding actually states a different rule: "Most commonly, issue preclusion arises from successive suits on different claims; this is referred to as collateral estoppel. If, however, the *second action* is on the *same claim* . . .

issue preclusion based on the earlier determination is described as 'direct estoppel.' " (*Sabek, Inc. v. Engelhard Corp*. (1998) 65 Cal.App.4th 992, 997 (*Sabek*), italics added.)

In *Sabek, supra*, 65 Cal.App.4th 992, defendant Engelhard Corporation successfully moved to quash service of the plaintiff's third amended complaint based on lack of personal jurisdiction. (*Id*. at p. 995.) This created a final, appealable order, but no judgment on the merits because the court had no jurisdiction over Engelhard. (*Id*. at p. 998.) At issue was Engelhard's third motion to quash service after the plaintiff served its fifth amended complaint. (*Id*. at p. 996.) The appellate court held direct estoppel applied to prevent the plaintiff from attempting to relitgate the issue of personal jurisdiction. (*Id*. at p. 1000.) "Clearly, the jurisdictional issue in the fifth amended complaint was identical, it was actually litigated in the prior proceedings, it was necessarily decided (twice), and the parties are the same." (*Id*. at p. 998.) The court explained that the finality required for issue preclusion is not the same as the finality required for claim preclusion. (*Ibid*.) "Thus, even when the underlying cause of action itself is not barred, the rules of issue preclusion may nevertheless apply to a final order in which personal jurisdiction is found to be absent." (*Id*. at p. 998.) Cobrae characterizes *Sabek* as a case involving "direct estoppel within the same action," and thus permitting the application of issue preclusion within the same action. While we disagree with his understanding of the phrase "direct estoppel," we acknowledge there are circumstances in which issue preclusion can occur within a single action.[2] (See *In re Matthew C*. (1993) 6 Cal.4th 386,

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[2] *Sabek* does not necessarily illustrate one of those circumstances. The appellate court in that case seemed to treat the service of the fifth amended complaint as a second action. (See *Sabek, supra,* 65 Cal.App.4th at p. 997 ["If, however, the second action is on the same claim, as in this case, issue preclusion based on the earlier determination is described as 'direct estoppel' "].) Nor does *Lennane v. Franchise Tax Board* (1996) 51 Cal.App.4th 1180, also relied on by Cobrae, support the concept of issue preclusion applying in a single action. In that case, the court rejected an argument that an earlier costs ruling was res judicata on the issue of substantial justification on a subsequent

393, superseded by statute on another point, as stated in *People v. Mena* (2012) 54 Cal.4th 146, 156 ["If an order is appealable . . . and no timely appeal is taken therefrom, the issues determined by the order are res judicata"]; *Wodicka v. Wodicka* (1976) 17 Cal.3d 181, 188 [issue preclusion "applies to final adjudications rendered in the course of a divorce proceeding over which a court may have continuing jurisdiction and which may require several orders for its ultimate disposition"]; see also *Samara v. Matar, supra,* 5 Cal.5th at pp. 327-328, 338 [analyzing preclusive effect of judgment against one defendant in an appeal from judgment as to the other defendant].) That does not, however, mean issue preclusion applies within *this* particular action.

Cobrae concedes the trial court was required to conduct a pragmatic analysis to determine the prevailing party for purposes Health and Safety Code section 17980.7, subdivision (c)(11), and he cites no authority concluding the court's ability to conduct this analysis is constrained by issue preclusion based on the underlying action. In fact, our Supreme Court has explained in the analogous context of a contract awarding attorney's fees to the prevailing party without defining that term, that "attorney fees should not be awarded *automatically* to parties in whose favor a voluntary dismissal has been entered. In particular, it seems inaccurate to characterize the defendant as the 'prevailing party' if the plaintiff dismissed the action only after obtaining, by means of settlement or otherwise, all or most of the requested relief, or if the plaintiff dismissed for reasons, such as the defendant's insolvency, that have nothing to do with the probability of success on the merits." (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 621.) In this

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motion for appellate costs: "The doctrine of res judicata fails because . . . the first ruling was not in a *former* action [citations], a requirement which would also apply should we view the issue one of 'collateral estoppel' [citation]. This was an earlier ruling in the *same* action." (*Id*. at p. 1185.) The court did state that "a prior appealable order becomes 'res judicata' *in the sense* that it becomes binding in the same case if not appealed." (*Id*. at pp. 1185-1186, italics added.) In context, that court was not expressing a belief that issue preclusion technically applies within the same proceeding.

situation, "a court may base its attorney fees decision on a pragmatic definition of the extent to which each party has realized its litigation objectives, whether by judgment, settlement, *or otherwise*." (*Id*. at p. 622, italics added.) While our Supreme Court did not directly address the question of issue preclusion, it does not appear that the mere fact the City dismissed the underlying action can preclude a court from determining there is no prevailing party under a pragmatic analysis.

Regardless, the party asserting issue preclusion bears the burden of establishing its threshold requirements. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) Cobrae has not discharged his burden. In particular, Cobrae cites neither the pleadings nor the applicable law to aid us in understanding what was actually at issue in the underlying proceeding.[3] For instance, Cobrae argues that since he "disputed the assertion that there were any uncorrected violations set forth in the notice of abatement, as a matter of direct estoppel, the filing of the petition to appoint a receiver was completely meritless." We may disregard his statement about what he disputed in the underlying action as unsupported by any citation to the record. (*City of Lincoln v. Barringer*, *supra*, 102 Cal.App.4th at p. 1239.) Moreover, it fails to establish that whether the violations were corrected *before the petition was filed* was at issue in the underlying proceeding. As such, Cobrae has not met his burden to establish the applicability of issue preclusion.

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[3] This presupposes that *any* issue in an action that ends in a dismissal with prejudice could be considered "actually litigated and necessarily decided" for purposes of establishing issue preclusion. (*DKN Holdings*, *supra,* 61 Cal.4th at p. 825.) "Although there is some controversy in the matter, the dominant rule in this state is that an issue that has been settled by a voluntary dismissal with prejudice does not constitute an issue that has been 'actually litigated' for collateral estoppel purposes. [Citations.] The California cases follow the rules set forth in the Restatement Second of Judgments that '[i]n the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated' and therefore collateral estoppel does not apply in a subsequent action. (Rest.2d Judgments, § 27, com. e, p. 257.)" (*Boeken v. Philip Morris USA, Inc*. (2010) 48 Cal.4th 788, 810 (dis. opn. of Moreno, J.).)

Torrey Pines Bank v. Superior Court (1989) 216 Cal.App.3d 813 (*Torrey Pines Bank*), relied upon by Cobrae, is inapposite. In that case, the majority held that when a guarantor dismissed his separate action with prejudice, "principles of res judicata" barred another action based on the same factual grounds alleged in the dismissed action and "also precluded him from asserting those identical facts as affirmative defenses" in the main action. (*Id.* at pp. 819, 821.) As relevant to our proceedings, the court noted "[t]he issues raised by [the guarantor]'s affirmative defenses in [the main action] are identical to the issues adjudicated in [the dismissed action]." (*Id.* at p. 824.) Again, Cobrae has not established the issues raised by his motion for attorney's fees are identical to issues adjudicated in the dismissed action.

Additionally, *Torrey Pines Bank* has not been expanded beyond its facts to prohibit a party from subsequently contesting any issue that was previously raised by its dismissed action: "The *Torrey Pines Bank* opinion did not preclude a party who dismisses his or her action with prejudice from contesting the allegations in the plaintiff's complaint. Rather, that opinion held that a party who dismisses his or her lawsuit with prejudice may not assert affirmative defenses *in the nature of new matter* where those affirmative defenses concern the same nucleus of operative facts as were alleged in the dismissed action." (*Walsh v. West Valley Mission Community College Dist.* (1998) 66 Cal.App.4th 1532, 1545.) Likewise, we will not extend *Torrey Pines Bank* to prohibit the City from presenting evidence to refute the allegations in Cobrae's motion for attorney's fees. Cobrae has failed to establish the City's filing of a dismissal with prejudice barred the trial court's conclusion that he was not the prevailing party.

2. Substantial Evidence

We review a trial court's determination of who was the prevailing party on a practical level for purposes of awarding attorney's fees for abuse of discretion. (*Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, 1154.) " ' "[D]iscretion is abused whenever . . . the court exceeds the bounds of reason, all of the

circumstances before it being considered." ' " (*Ibid*.) The judgment of the trial court is presumed correct, and we are bound by the substantial evidence rule: " ' "[A]ll intendments and presumptions are indulged in support of the judgment; conflicts in the declarations must be resolved in favor of the prevailing party, and the trial court's resolution of any factual disputes arising from the evidence is conclusive." ' " (*Ibid*.)

The trial court concluded Cobrae was not the prevailing party in part because the city had accomplished a litigation objective of having him comply with citations and notices. We disagree with Cobrae's assertion that there was no substantial evidence to support this finding. The trial court relied on a declaration from the aforementioned officer from the police department's code enforcement division who stated she was familiar with the property because she had inspected it and sent administrative citations to Cobrae. The officer declared that, on February 11, 2016, "Cobrae had not fixed any of the violations." After that date, calls for service to the police and fire departments dramatically decreased. The trial court also relied on a declaration from the Building Official for the City explaining that he had personally inspected the property and, as of February 11, 2016, the City had issued Cobrae 41 administrative citations, 11 notices of violation, two "Structure Unfit for Human Occupancy" tags, and one correction notice, but Cobrae had refused to comply with them. As the City notes, certain repairs require a property owner to obtain a building permit. (Cal. Code Regs., tit. 24, § 105.1.)[4] The work is subject to inspection by the building official and certain inspections are required, including a final inspection. (*Id*., §§ 110.1, 110.3, 110.3.10.) A permit for electrical, plumbing, and structural work related to a December 2014 fire on the property expired February 25, 2016, and was reissued. On May 18, 2016, an inspection of the property

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[4] "Title 24, part 2 of the California Code of Regulations is also known as the California Building Code and is published separately under that name." (*Urhausen v. Longs Drug Stores California, Inc.* (2007) 155 Cal.App.4th 254, 259, fn. 2.)

conducted by the officer, the Building Official, and the Senior Housing Inspector for the City demonstrated that nearly all of the violations had been corrected. This was substantial evidence that citations and notices were complied with as a result of the filing of the petition.

Cobrae argues the City cannot claim there were any outstanding violations when its petition was filed because he declared under penalty of perjury that the repairs had been completed by December 2015. His declaration was somewhat qualified: "[a]ll corrective work set out in the citations—that is to say everything that was not a permitting violation—was *substantially* completed by the end of December, 2015, but the City would not allow [the Building Official] to fully inspect the completed work." (Italics added.) Moreover, the trial court noted there was evidence to contradict Cobrae's declaration and no evidence that any requests for inspection were made before the City filed the petition.[5] Conflicts in the declarations must be resolved in favor of the City. (*Salehi v. Surfside III Condominium Owners Assn.*, *supra*, 200 Cal.App.4th at p. 1154.) Accordingly, Cobrae's citation to his declaration is insufficient to establish the trial court abused its discretion. Cobrae seems to argue substantial evidence is nothing short of a declaration from someone at the City specifically stating that he or she saw or inspected the property around the time the petition was filed. We disagree. There was substantial evidence to support the trial court's conclusion that "the weight of the specific factual evidence before the court supports [a] finding that as of the date the petition was filed, there remained repairs to be[] completed in order [to] correct the cited building and safety code violations." Cobrae has failed to demonstrate the trial court abused its discretion in denying his motion for attorney's fees.[6]

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[5] This defect persists on appeal.

[6] In light of this conclusion, we need not address the City's argument that Health and Safety Code section 17984 exempts it from paying Cobrae's attorney's fees. (See Health

C. Attorney's Fees for Opposing Motion for Sanctions

As set forth above, Cobrae filed a motion for sanctions under section 128.5. "[S]ection 128.5 authorizes a trial court to award sanctions for bad faith actions or tactics that are frivolous or solely intended to cause delay. Pursuant to former subdivision (f) of section 128.5 (former subdivision (f)), effective from January 1, 2015[,] until amended by urgency legislation enacted August 7, 2017, any such sanctions had to be imposed 'consistently with the standards, conditions, and procedures set forth in subdivisions (c), (d), and (h) of Section 128.7.' " (*Nutrition Distribution, LLC v. Southern SARMs, Inc*. (2018) 20 Cal.App.5th 117, 120, fn. omitted.) The City opposed Cobrae's motion and requested its attorney's fees for doing so pursuant to section 128.7, subdivision (c)(1).[7] It provides: "If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion."[8] The court denied Cobrae's motion and, as requested by the City, awarded the City its attorney's fees under section 128.7, subdivision (c)(1). Cobrae brought a motion to

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& Saf. Code, § 17984 ["Neither an enforcement agency, any of its officers, nor any city or county for which an enforcement agency may act, is liable for costs in any action or proceeding that the enforcement agency may commence pursuant to this article"].)

[7] Cobrae's reply brief in support of his motion for sanctions did not directly respond to the City's request, but rather argued that his motion for sanctions should be granted.

[8] On reply, Cobrae argues for the first time that the attorney's fee award is invalid because the motion for sanctions had to be made under section 128.5 in order to support an award of attorney's fees to the prevailing party. Again, arguments raised or only supported by authority on reply have been waived. (*People v. Baniqued, supra,* 85 Cal.App.4th at p. 29.) We note section 128.5 has since been amended to state directly that a party successfully opposing a motion for sanctions may be awarded its attorney's fees. (§ 128.5, subd. (f)(1)(C) ["Sanctions ordered pursuant to this section shall be ordered pursuant to the following conditions and procedures: [¶] . . . [¶] If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion"].) That provision "applies to actions or tactics that were part of a civil case filed on or after January 1, 2015." (§ 128.5, subd. (i).)

reconsider this ruling partly on the basis that the court did not make the findings necessary to justify granting a counter motion for sanctions under section 128.7, subdivision (h). (See § 128.7, subd. (h) ["A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose . . . shall itself be subject to a motion for sanctions"].) In response, the court reiterated the basis for the attorney's fees award and added: "The standard of Section 128.7[, subdivision](c)(1) for award of attorney fees and costs to the prevailing party on the motion for sanctions is incorporated by reference into Section 128.5 by operation of Section 128.5[, subdivision](f)."

On appeal, Cobrae argues the trial court abused its discretion in awarding sanctions because the City's motion for sanctions did not comply with the safe harbor provisions of section 128.7. (See *Nutrition Distribution, LLC v. Southern SARMs, Inc.*, *supra,* 20 Cal.App.5th at p. 130 ["when the motion for sanctions was based on a purportedly frivolous complaint, written motion or court filing that could be withdrawn or on some other alleged action or tactic that could be appropriately corrected, former subdivision (f) required the moving party to comply with the safe harbor waiting provisions of section 128.7, subdivision (c)(1)"].) This argument is without merit because, as the trial court made clear, it did not award the City sanctions based on the City's own motion but rather attorney's fees for defending Cobrae's motion under section 128.7, subdivision (c)(1).[9]

D. Discovery

On April 21, 2016, Cobrae filed an ex parte motion to compel responses to requests for production of documents and depositions. The court denied it on the basis

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[9] The balance of Cobrae's arguments pertaining to the trial court's denial of his sanctions motion and award of attorney's fees are forfeited because, though he cites the trial court's orders, he cites nothing else in the record and no law to support his arguments. (*In re S.C.*, *supra,* 138 Cal.App.4th at p. 408.)

that Cobrae had not established his right or necessity to proceed ex parte. The court noted no motion to shorten time had been filed. The court also stated, "none of moving party's motions appear to have merit."

On appeal, Cobrae offers the following argument regarding the denial of this motion, unsupported by any citation to authority or facts in the record to support his assertions: "Given the accelerated pace of the proceedings, it was impossible to proceed on a noticed motion basis. It was abuse of discretion [for] the trial court to refuse to address the motions on an ex parte basis when that is how the parties elected to proceed by stipulation. No reasonable judge would do this." This is insufficient to establish reversible error. (*In re S.C., supra,* 138 Cal.App.4th at p. 408.) Additionally, Cobrae's failure to address whether the discovery motions even had merit is a separate basis for our conclusion that he has failed to demonstrate reversible error with respect to the court's denial of his ex parte motion.

Cobrae also challenges the trial court's denial of his request for a post-judgment evidentiary hearing. In denying the request, the court noted that our Supreme Court has explained that "scarce judicial resources should not be used to try the merits of voluntarily dismissed actions merely to determine which party would or should have prevailed had the action not been dismissed." (*Santisas v. Goodin, supra,* 17 Cal.4th at p. 621.) To support his argument, Cobrae does not cite the actual request or demonstrate its underlying merit. Indeed, the only citation he offers to support his argument is to the trial court's denial of this request. Again, this is insufficient to establish reversible error.

III. DISPOSITION

The judgment is affirmed. Respondent City of South Lake Tahoe shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/S/

RENNER, J.

We concur:

/S/

BLEASE, Acting P. J.

/S/

HOCH, J.